

# SUPREME COURT OF ARKANSAS

No. 08-380

CITY OF CENTERTON,

APPELLANT,

VS.

CITY OF BENTONVILLE,

APPELLEE,

Opinion Delivered December 11, 2008

PETITION FOR REHEARING

GRANTED.

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## PER CURIAM

APPEAL & ERROR – CLARIFICATION OF DATE OF FILE STAMP RENDERED APPEAL TIMELY – APPEAL TO BE HEARD AND DECIDED. – Appellant’s appeal was initially dismissed based on a lack of jurisdiction due to failure to file the notice of appeal within thirty days as required by Ark. R. App. P. –Civ. 4(a); the supreme court’s decision was based on a file stamp that appeared to indicate filing on December 28, 2007, and this conclusion was affirmed by the signature date of December 27, 2007, after receiving an affidavit from the circuit clerk clarifying that the notice of appeal was filed on December 26, 2007, and not on December 28, 2007, the supreme court determined that the notice of appeal was timely.

No briefs filed.

The City of Centerton petitions this court for rehearing. This court dismissed Centerton’s appeal on November 5, 2008, based on a lack of jurisdiction due to a failure to file the notice of appeal within thirty days as required under Ark. R. App. P.–Civ. 4(a). Our decision was based on a file stamp that appeared to indicate filing on December 28, 2007, and this conclusion was affirmed by the signature date of December 27, 2007, on the notice of appeal. We have now received an affidavit from the Benton County Circuit Clerk clarifying that the notice of appeal was filed on December 26, 2007, and not on December 28, 2007. The

signature date of December 27, 2006, was apparently a scrivener's error. This makes the notice of appeal timely. We grant the petition for rehearing, and the appeal in this case will be heard and decided.

We also take this opportunity to address the subject of file marks more generally. The rights of litigants, including criminal appellants, turn on accurate file marks. Clerks should assure that file stamps produce clear and legible file marks. They should assure that stamps are always sufficiently inked to provide a clearly legible mark. Those placing the file marks should check to see that the file mark produced is clear and legible and that it is dark enough to be legible on copies. Further, while not present in the case at issue, all too often a file mark is placed over the top of other printing on the page. This frequently makes the file mark unreadable or nearly unreadable. File marks should never be stamped on top of other printing. We also ask counsel to assure that documents have legible file marks. They should take particular care in assuring that all records and addenda contain copies of documents with legible file marks.

IMBER, J., would deny.